

Chuitna Coal Project
Annotated Agenda -items identified by the Native Village of Tyonek
for
April 2013 Meeting with EPA Leadership

Background

The Native Village of Tyonek has requested a meeting with EPA leadership at HQ on April 1-3 to discuss the proposed Chuitna Coal Project in Alaska, which they formally oppose. NVT has informed Region 10 staff that the meeting will be “up-beat” and “positive,” with no significant concerns or issues re: EPA or our role in the project. To this end, NVT plans to present a resolution/letter to EPA recognizing our efforts working with the Tribe on a gov-to-gov basis. NVT did submit six proposed discussion topics which are included below with key background and messaging. An additional discussion topic which may come up is also included at the bottom.

1. Presentation of NVT Resolution, Recognizing EPA’s Commitment to Tribal Consultation

- The Native Village of Tyonek is in the process of drafting a resolution recognizing EPA and Region 10’s tribal consultation efforts.
- The Tribe has expressed gratitude and appreciation for EPA’s ongoing involvement in the project and the commitment of the Region/Agency to maintaining and fostering meaningful Gov-to-Gov relations.

2. Update on the Chuitna draft SEIS

- Supplemental EIS still being developed. Cooperating agencies have reviewed/commented on various preliminary sections of document.
- Based largely on EPA comments, Corps is working with applicant to develop additional alternatives for consideration in the SEIS. Additional work on SEIS will commence after alternatives are finalized. Corps in discussions with EPA on potential environmental benefit of smaller mine scenario (mining around streams).
- After finalization of alternatives the next steps are affected environment, impacts, and mitigation.
- Anticipated preliminary draft SEIS for cooperating agency review in late 2013/early 2014.
- Public draft SEIS in mid-2014.

KEY MESSAGE: As a cooperating agency ourselves, we have no role in establishing the NEPA schedule or timeline for decision-making.

3. Discussion regarding Army Corp use of NEPA authority to influence the 106 process

- EPA initiated National Historic Preservation Act (NHPA) Section 106 process when we were lead agency on the SEIS. Investigations led to the discovery of large number of historic and pre-historic cultural features and resources in project area. Area designated by EPA and SHPO as *Ch’u’itnu* Archaeological District, and is eligible for listing on National Register. Project has potential for direct and indirect impacts to resources.
- As only remaining federal agency, Corps assumed NHPA Section 106 lead along with NEPA lead in 2010.
- The Corps has been in ongoing 106 consultation with NVT, Alaska SHPO, and Advisory Council on Historic Preservation (ACHP) re: the project’s potential impacts to features of the *Ch’u’itnu* Archaeological District.
- Have been disagreements between Corps and NVT regarding 106 processes. NVT believes additional research/investigations are warranted while Corps would like to proceed with resolution of adverse effects and mitigation (i.e., moving forward with Programmatic Agreement; see next discussion topic below)

KEY MESSAGE: Recognize importance of the identified resources to the people of NVT and the greater Cook Inlet area. However, EPA has no role in 106 consultation process and will not be a signatory to any agreement (MOA or PA) re: resolution of adverse effects. Region 10 made this very clear to all Cook Inlet Tribes in face-to-face meetings when we transferred lead to the Corps in 2010. Encourage NVT to continue working through 106 processes and remain engaged with Corps (as lead), AK SHPO, and ACHP (as experts in 106 responsibilities and compliance) during impacts and mitigation discussions.

4. Discussion regarding the Programmatic Agreement and Army Corps efforts to present a draft PA prematurely

- Sensitive Topic. EPA initiated the Section 106 process when we were the lead for the SEIS. After 3+ years of investigations and numerous reports (which NVT was involved in) EPA began development of a Programmatic Agreement (in consultation with NVT, AK SHPO, etc.) to outline the terms and conditions for resolving adverse effects. AK SHPO and ACHP concurred that PA was appropriate vehicle for 106 compliance and resolution of adverse effects.
- The Corps is now leading the 106 process and would like to move forward with the PA.
- NVT now believes that additional investigations are warranted and that the PA is being pushed prematurely.

KEY MESSAGE: Recognize importance of the identified resources to the people of NVT and the greater Cook Inlet area. However, EPA has no role in 106 consultation process and will not be a signatory to any agreement (MOA or PA) re: resolution of adverse effects. Region 10 made this very clear to all Cook Inlet Tribes in face-to-face meetings when we transferred lead to the Corps in 2010. Encourage NVT to continue working through 106 processes and remain engaged with Corps (as lead), AK SHPO, and ACHP (as experts in 106 responsibilities and compliance) during impacts and mitigation discussions.

5. Discussion of the continued difficulty for NVT as a Cooperating Agency, to participate in all sub-groups and receive information in a timely fashion from Army Corps

- NVT is a cooperating agency in the SEIS process, invited by EPA in 2008. One of first tribes in Alaska to be invited as cooperating agency for large resource extraction project.
- When lead agency role was transferred to Corps they kept all cooperating agencies on board, including NVT.
- Relationship between NVT and the Corps has been strained at times. Prior disagreements over NVT's ability to hire external experts to provide technical assistance have been resolved (Corps agreed NVT could hire technical experts as long as non-public data remains confidential, etc.) Relations appear to be improving.
- Similar to approach taken by EPA when lead, the Corps has convened "sub-groups" made up of technical experts from certain cooperating agencies to review and comment on preliminary drafts of technical resource reports (i.e., technical baseline reports used in SEIS analysis). Certain cooperating agencies (NVT and USFWS) were not invited by Corps to participate in sub-groups for wetlands or hydrology. NVT has taken issue with this and would like to be included in all sub-groups and have access to all preliminary data and reports.
- At Region 10's encouragement, the Corps has agreed to provide all cooperating agencies (incl. NVT) with copies of the preliminary reports and comments received during sub-group review.

KEY MESSAGE: Encourage NVT to continue to work through regulatory and NEPA processes with the Corps (as lead agency) and other cooperating agencies. Encouraged that relations between NVT and Corps appear to be improving. It is essential that NVT continue to work with the Corps as lead agency. NVT is one of first tribes in Alaska to be a cooperating agency on a project of this nature. EPA will continue to remain actively engaged and help emphasize the importance of open dialogue and free exchange of information throughout NEPA and regulatory process.

6. Update from EPA on Leadership transition

- NVT will likely be looking for an assurance of EPA continuity re: our commitment and involvement in Chuitna during and after the EPA leadership transition from Administrator Jackson to Administrator McCarthy.

7. EPA Technical Resources to Support NVT (not identified as discussion topic, but likely to come up)

- NVT has previously commented that they have limited environmental program management and technical capacities. They find it challenging to navigate the NEPA and regulatory processes and effectively comment and participate as a cooperating agency, and impossible to plan adequately for protecting the environment and public health facing a project and impacts of this scale.
- NVT has repeatedly requested EPA consider providing technical assistance to the Tribe through EPA staff, contract dollars, etc.
- Regional response has been that we are limited in our ability to provide financial resources, but are always available at the staff level to discuss technical issues on an as-needed basis.
- Given current strategic realignment efforts, FTE ceiling, and budget issues, R10's ability to provide NVT with technical assistance is very limited, and we have not been able to identify any additional resources.
- Any assistance HQ could provide in the way of technical assistance for NVT, and in identifying any additional funding and/or contract dollars that may be available, would be welcome.

KEY MESSAGE: With budget uncertainties and the amount of resources Region 10 is already devoting to this project (which we are not lead for), we cannot commit to providing any additional resources beyond staff level technical support at this time.

Contact: Jamey L. Stoddard, NEPA Compliance, (206.553.6110)